

1. INTERNATIONAL ACTIVITIES

A. International Maritime Organization (IMO), Subcommittee on Dangerous Goods, Solid Cargoes and Containers (DSC)

The 7th session of the Subcommittee on Dangerous Goods, Solid Cargoes and Containers (DSC 7) was held at IMO Headquarters in London from September 23-27, 2002. The session was attended by representatives from 54 member nations, 1 associate member, and 19 non-governmental organizations in consultative status. The United States was represented by the Coast Guard with assistance from the Research and Special Programs Administration, the National Cargo Bureau, the Port of Corpus Christi, and the Department of State.

DSC 7 agenda items included the following: (1) amendments to the International Maritime Dangerous Goods (IMDG) Code and its annexes and supplements, including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods, and implementation of Annex III of the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978, as amended, (MARPOL 73/78); (2) review of the Code of Safe Practice for Solid Bulk Cargoes (BC Code), including evaluation of properties of solid bulk cargoes; (3) matters related to the Cargo Securing Manual (CSM); (4) casualty and incident reports and analysis; (5) development of an instrument for multimodal training requirements; (6) stowage and segregation requirements for freight containers on containerhips with partially weatherproof hatchway covers; (7) development of a manual on loading and unloading of solid bulk cargoes for terminal representatives; (8) guidance on serious structural deficiencies in containers; and (9) measures to enhance maritime security.

Among significant actions taken at DSC 7 are the following:

1. The DSC reviewed nearly 30 separate proposals for amendment of the IMDG Code. In each case, the Subcommittee made a determination on the merits of the proposals in principle. Those that were adopted were referred to the Subcommittee's editorial and technical group for final drafting prior to inclusion in the draft of amendment 32, which is to be completed at the DSC 8. Most delegations felt that the DSC needed to have a new work program item added to its agenda to address amendments to MARPOL Annex III taking into account the new environmental criteria emanating from the Globally Harmonized System of Classification and Labelling of Chemicals. This issue will be brought to the attention of the Marine Environment Protection Committee (MEPC) with a request that a new agenda item be added to the DSC's work program.
2. Concerning review of the BC Code, the DSC discussed some of the key issues and established a working group to address the items in detail, including restructuring of the BC Code, amendments to the BC Code, and revision of Maritime Safety Committee (MSC) circular 671 concerning solid bulk cargoes that are non-combustible or constitute a low fire risk. Since there is a great deal of detailed technical review involved, the DSC recognized that it would take considerably more time to properly complete this task and decided to receive only an oral report of the working group's progress at this session.

3. With regard to casualty and incidents reports and analysis, the DSC considered a concern raised by the International Cargo Handling Coordination Association (ICHCA) and the International Association of Ports and Harbors (IAPH) about fumigation of solid bulk cargoes, and instructed the IMO secretariat to disseminate appropriate information by means of a DSC circular. After reviewing reports on container inspection programs from member governments and a consolidated report prepared by the secretariat, the Subcommittee agreed to urge governments to continue to conduct container inspection programs and instructed the secretariat to continue to prepare consolidated reports for future sessions.
4. The Subcommittee evaluated a report of the intersessional correspondence group on stowage and segregation requirements for freight containers on containerships with partially weatherproof hatchway covers and established a working group to complete development of proposed requirements. In reviewing the report of the working group, the DSC took note of the hazards identified, accident history, principles for stowage and segregation, and application of those principles. Following this review, the Subcommittee agreed to final draft guidelines for the stowage and segregation of dangerous goods on containerships with partially weatherproof hatchway covers for inclusion in the MSC circular that will provide overall guidelines for these ships.
5. Concerning measures to enhance maritime security, the DSC began preliminary consideration of this recently added work item to undertake a review of three cargo-related IMO instruments in light of possible inclusion of security measures. The Subcommittee intends to give detailed consideration to these issues at its next session when progress and results of other key, relevant work are expected to be available, including that of: (a) the World Customs Organization (WCO); (b) the United Nations Committee of Experts on the Transport of Dangerous Goods; (c) the 76th session of the MSC; and (d) the SOLAS diplomatic conference to adopt a new chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS Convention) and an associated new International Ship and Port Facility Security (ISPS) Code.

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B. International Maritime Organization (IMO), Marine Environment Protection Committee (MEPC)

The 48th session of the Marine Environment Protection Committee (MEPC 48) was held at IMO Headquarters in London from October 7-11, 2002. The meeting was attended by representatives from 86 member nations, 1 associate member, 2 United Nations agencies, 5 intergovernmental organizations, and 35 non-governmental organizations. The United States was represented by the Coast Guard with assistance from the Environmental Protection Agency, the Department of State, the Department of Defense (Navy), the National Oceanic and Atmospheric Administration,

and the Maritime Administration, as well as the American Association of Port Authorities, the Chamber of Shipping of America, and the American Bureau of Shipping.

MEPC 48 agenda items included: (1) control of harmful aquatic organisms in ballast water; (2) guidelines for recycling of ships; (3) prevention of air pollution from ships; (4) consideration and adoption of amendments to mandatory instruments; (5) implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) and the OPRC-Hazardous and Noxious Substances Protocol (OPRC-HNS); (6) identification and protection of Special Areas and Particularly Sensitive Sea Areas (PSSAs); (7) inadequacy of reception facilities; (8) promotion of implementation and enforcement of the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978, as amended, (MARPOL 73/78), and related codes; (9) technical cooperation for protection of the marine environment; (10) interpretation and amendments of MARPOL 73/78 and related codes; (11) control of the harmful effects of the use of anti-fouling paints for ships; and (12) future role of formal safety assessment and human element issues.

Significant actions taken at MEPC 48 include the following:

1. A working group met to continue development of a draft international convention for the control and management of ships' ballast water and sediments. Building on the outcomes of its intersessional meeting the previous week, the group focused on the development of ballast water treatment performance standards, the approval process for ballast water treatment systems, concepts associated with special requirements for certain areas, and further development of the text of the convention. The United States submitted a number of proposals on these issues, the major concepts of which are now incorporated in the draft convention text. While considerable progress was made in all areas, a significant amount of work remains. An intersessional working group will meet prior to MEPC 49 to further work on the draft convention so that MEPC 49 can decide as to whether the instrument is sufficiently developed to recommend the holding of a diplomatic conference in early 2004.
2. The Committee established a working group to consider greenhouse gas (GHG) emissions from international shipping. A draft resolution was further developed and will be forwarded to MEPC 49 for finalization and subsequent adoption at the 2003 IMO Assembly. Key action items in the draft resolution include: (a) monitoring by the MEPC of voluntary measures to limit or reduce (GHG) emissions and (b) consideration, if necessary, of mandatory or alternative measures based on an evaluation of the effectiveness of the voluntary measures.
3. The Committee convened a working group to further develop draft guidelines for the recycling of ships in order to assist in addressing concerns regarding the impact of ship recycling (scrapping) on the environment and on occupational safety and health. The group made substantial revisions to the draft guidelines consistent with U.S. objectives. However, additional work and input from various IMO subcommittees are necessary to complete the guidelines. The MEPC established an intersessional correspondence group, to be coordinated by Bangladesh, and a working group at MEPC 49 to continue work on the

guidelines. Several items from the draft guidelines were referred by the MEPC to several subcommittees for technical advice.

4. The MEPC established a drafting group to revise the draft guidelines on survey and certification for anti-fouling systems on ships, which had been drafted by the Subcommittee on Flag State Implementation (FSI). All U.S. proposals were incorporated. The guidelines were approved and adopted as an MEPC resolution. The Committee also instructed the FSI to continue work on the guidelines for brief sampling of anti-fouling systems on ships and the guidelines for inspection of anti-fouling systems on ships. The IMO secretariat has issued a circular document to help communicate information regarding any anti-fouling systems approved, restricted, or prohibited under IMO member state domestic law.
5. The MEPC unanimously adopted amendments to the list of substances annexed to the 1973 Intervention Protocol. These amendments simplify the list by referring to lists contained in Annex I (oil), Annex II (noxious liquid substances in bulk), and Annex III (harmful substances in packaged form) of MARPOL 73/78, as well as certain substances listed in the International Maritime Dangerous Goods (IMDG) Code, the International Bulk Chemical (IBC) Code, the International Gas Carrier (IGC) Code, and other related sources.
6. Among its actions regarding Special Areas and PSSAs, the Committee: (a) approved final designation as a PSSA of the Wadden Sea, which was submitted by Denmark, Germany, and the Netherlands, since associated protective measures (APMs) are already in existence; (b) approved, in principle, a PSSA for the Paracas National Reserve, which was submitted by Peru; (c) agreed to adopt a guidance document, drafted originally by the United States, to assist states in the development of PSSA proposals; and (d) approved an amendment to Annex I of MARPOL 73/78 to designate the Oman Area of the Arabian Sea as a Special Area.
7. The MEPC approved the issuance of the revised Manual on Oil Pollution, Section IV, Combating Oil Spills, which contains substantial updating with regard to mechanical containment and recovery, chemical dispersion, and in situ burning as oil spill response technologies. In addition, the Committee also approved a plan to support implementation of the 2000 Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol). This plan follows an implementation paradigm similar to that used for oil pollution under the OPRC Convention. The Committee also agreed to revise the Manual on Chemical Pollution, Section 2, Search and Recovery of Packaged Goods Lost at Sea.
8. The Committee noted that, with the ratification of Annex IV (sewage) of MARPOL 73/78 by Norway, the conditions for entry into force had been met, and the Annex would become effective on September 27, 2003. Annex IV has been ratified by 88 nations, but not by the United States. The United States must now determine the impact that the entry into force of Annex IV will have on U.S.-flag ships operating on international voyages and how to address the impact.

9. With regard to the consideration of a revised system for categorizing cargoes of noxious liquid substances under Annex II of MARPOL 73/78, the Committee considered the advantages and disadvantages for the proposed three category and five category systems developed by the Subcommittee on Bulk Liquids and Gases (BLG). Although a compromise solution was not reached, considerable progress was made in understanding the views of both sides in supporting a three category or five category system. Japan expressed its intent to propose a four category compromise to MEPC 49, along with appropriate information on the impact of such a system.
10. The Committee agreed with the submission by Germany that the existing criteria for environmentally hazardous substances under Annex III of MARPOL 73/78 were not in line with the revised evaluation procedure. The MEPC agreed to request the Subcommittee on Dangerous Goods, Solid Cargoes and Containers (DSC) to review the criteria for marine pollutants subject to Annex III of MARPOL 73/78 and advise the Committee accordingly.
11. Concerning enforcement of MARPOL 73/78, the Committee agreed with the proposal by several nations to make flag state comments available to the Equasis database on port state control information. The MEPC also agreed that, in view of the low level of reporting of port state control detentions, members should provide submissions to the next session to rectify this situation.

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C. International Maritime Organization (IMO), Legal Committee (LEG)

The 85th session of the Legal Committee (LEG 85) was held at IMO Headquarters in London on October 22-24 and 28, 2002. Delegations from 81 member nations, 1 associate member, and 30 intergovernmental and non-governmental organizations attended LEG 85. The United States was represented by the Coast Guard with assistance from the Department of State, the National Oceanic and Atmospheric Administration, the Transportation Security Administration, the Department of Defense, the Department of Justice, and the Maritime Law Association.

Issues addressed by LEG 85 included the following: (1) draft convention on wreck removal (WRC); (2) review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (SUA Protocol); (3) monitoring the implementation of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention); (4) Joint IMO/International Labor Organization (ILO) Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury, and Abandonment of Seafarers (Joint IMO/ILO Working Group); (5) technical cooperation

subprogram for maritime legislation; (6) matters arising from the 88th session of the IMO Council (C 88); (7) review of the status of conventions and other treaty instruments adopted as a result of the work of the LEG; and (8) other business, such as measures to protect crews and passengers against crimes on vessels, places of refuge, and treatment of persons rescued at sea.

Among significant actions taken at LEG 85 are the following:

1. The United States presented proposed amendments to the SUA Convention and the SUA Protocol, and other delegations commented on the proposals. These proposed amendments are designed to facilitate, strengthen, and expand international cooperation and coordination in combating criminal activity, including possible terrorist acts. The United States made the presentation as lead country for the intersessional SUA correspondence group tasked with reviewing the SUA Convention and the SUA Protocol, proposing necessary amendments to the two instruments, and reporting to the Legal Committee at its 85th session. In discussing the draft SUA amendments, the LEG successfully met one of the action items contained in the terms of reference for the SUA correspondence group, i.e., addressing the question of whether there is a need to update the SUA Convention and SUA Protocol. There appeared to be consensus among the delegations that both instruments need to be updated, although delegations expressed different views on whether the scope of the draft amendments is appropriate.
2. The LEG continued work on the draft WRC and formed a WRC working group to continue discussions. Topics discussed included specific issues related to: (a) measures to facilitate the removal of wrecks (article 10); (b) financial liability for locating, marking, and removing wrecks (article 11); and (c) compulsory insurance or evidence of financial security (article 13). The Committee did not reach final conclusions on these issues. The United States and other delegations continue to have concerns regarding the consistency of the draft WRC with the United Nations Convention on the Law of the Sea (UNCLOS).
3. The chairman of the Joint IMO/ILO Working Group provided an oral report regarding the group's 4th session held from September 30 to October 4, 2002. The LEG endorsed the holding of a 5th session of the Joint IMO/ILO Working Group so that it may continue monitoring the implementation of the seafarer resolutions of the IMO Assembly (A.930(22) and A.931(22)). As part of this monitoring process, the working group prepared two questionnaires, which the Committee supported. The LEG requested the IMO secretariat to circulate the questionnaires to governments and relevant organizations.
4. Concerning measures to protect crews and passengers against crime on vessels, the LEG decided that it would not be appropriate to include this matter as part of the review of the SUA Convention. The Committee further agreed that more information on states' current practice and domestic law is needed before determining if the matter should be placed on the LEG work program. The International Maritime Committee, an observer organization, was requested, in consultation with the IMO secretariat, to develop and send a questionnaire to IMO member governments regarding this issue.

5. The Director of the IMO Maritime Safety Division informed the LEG that the Maritime Safety Committee (MSC) was considering the operational aspects of the places of refuge issue. There may be three draft Assembly resolutions regarding this matter that the MSC, at its 76th session, may decide to request the LEG to consider from a legal perspective, i.e., liability and compensation for damage arising from entry of a ship in need of assistance into a place of refuge.

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D. International Maritime Organization (IMO), Protocol to Amend the Athens Convention

The International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea was held at IMO Headquarters in London from October 21 – November 1, 2002. Delegations from 71 member nations, 1 associate member, 1 observer nation, 3 intergovernmental organizations, and 18 non-governmental organizations attended the Conference. The United States was represented by the Coast Guard with assistance from the Department of State and several private sector advisers.

The diplomatic Conference reached agreement on the revision of the 1974 Athens Convention and adopted the Protocol of 2002 to the Athens Convention. Major provisions of the 2002 Athens Protocol include: (1) an increase of the carriers' overall liability limit to 400,000 SDR (about \$524,000 U.S.) per passenger on each distinct occasion; (2) the creation of an "opt-out" provision allowing a state party to increase or to eliminate limits of liability; (3) a requirement for carriers to provide insurance to cover passengers on ships for 250,000 SDR (about \$327,500 U.S.) per passenger on each distinct occasion; and (4) the introduction of a two-tier liability scheme for death of or personal injury to a passenger caused by a "shipping incident" (e.g., collision, stranding, fire, explosion, capsizing, or defect in the ship).

For the two-tier liability scheme, the first tier imposes strict liability for damages up to 250,000 SDR (about \$327,500 U.S.) per passenger, and the second tier places the burden of proof on the carrier to rebut claims based on fault or neglect for damages in excess of the first tier ceiling (i.e., above 250,000 SDR up to the limit of liability of 400,000 SDR per passenger). Responding to legitimate industry concerns, however, the Protocol maintains that liability for passenger death or personal injury not caused by a shipping incident (e.g., injuries related to the hotel-like functions of passenger ships such as slips and falls) should be based on fault or neglect of the carrier with the burden of proof on the claimant.

The United States is not a party to the Athens Convention, largely because of currently low limits of liability, but the existing Athens Convention nevertheless may directly govern the rights of U.S. citizens on cruise ships departing from foreign ports. Accordingly, the 2002 Athens Protocol offers the prospect of a significant increase in protections for U.S. passengers. In many respects, the amendments would bring protection for ship passengers into line with protections offered for airline passengers under the Montreal Convention.

The Athens Protocol will enter into force 12 months following the date on which 10 states have either signed it without reservation as to ratification, acceptance, or approval or have deposited instruments of ratification, acceptance, approval, or accession with the IMO.

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